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NOT TO BE PUBLISHED



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Amador)

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| THE PEOPLE,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>VEASNA EL,<br><br>Defendant and Appellant. | C084854<br><br>(Super. Ct. No. 15CR2370102) |

## SUMMARY OF THE APPEAL

Defendant Veasna El was a passenger in a van pulled over for a traffic stop. During the stop, an officer found a methamphetamine pipe and a bag of ammunition in the center console. The officer also found stolen credit cards and other personal information in the glove compartment. And in the passenger-side door pocket the officer found a single round of ammunition, along with, but partially beneath, other small

objects. A jury found defendant guilty of possessing drug paraphernalia, possessing ammunition as a felon, and identity theft.

On appeal, defendant contends there was insufficient evidence presented to support his convictions for possessing the drug paraphernalia, for possessing ammunition and for identity theft. We agree. We reverse and remand for resentencing.

## FACTS

At 5:18 a.m., an officer stopped a van for a nonfunctioning taillight. The officer approached the passenger side and saw defendant in the passenger seat. Neither defendant nor the driver appeared nervous, and the officer did not smell alcohol or burnt methamphetamine. The driver said the van was his.

In the passenger side door pocket, the officer saw a bullet. The officer described the pocket as, "[t]he handle that you commonly see inside of a vehicle to grab and close the door." The bullet was next to a spark plug and some other item (the officer could not identify the other item). The record includes a photo of the door pocket. Though the photo is blurry, the bullet can be seen sandwiched between what looks to be the sparkplug and several other small objects.

The officer asked for identification. Defendant gave a false name, "Veasna Leo," and date of birth. A records check returned no information. When defendant subsequently provided his real name and date of birth, two arrest warrants were discovered.

The officer asked the driver if anything illegal was in the car.
The driver said a pipe was in the center console. The officer then searched the very cluttered van — during the search several cockroaches scattered.

In the center console, the officer found a zipped black pouch with a methamphetamine pipe inside. Under the pouch was a clear Ziploc bag with 16 rounds of ammunition. The officer testified that, to see the bag of bullets, he "had to actually pick-

up something and remove it out of the center console." The rounds were the same caliber as the one in the door pocket. The driver told the officer no gun was in the car and the ammunition belonged to his girlfriend. Defendant was never asked if anything illegal was in the van.

Inside the closed glove box, the officer found a plastic bag containing credit cards, and tax and bank information of four different people.

At some point, the driver told the officer defendant was his friend. None of the items was fingerprinted.

## CRIMINAL PROCEEDINGS

The jury found defendant guilty of possessing ammunition as a felon (Pen. Code, § 30305, subd. (a); Count I; statutory section references that follow are to the Penal Code unless otherwise stated), four misdemeanor counts of identity theft (§ 530.5, subd. (c)(1); Counts II–V), misdemeanor possessing drug paraphernalia (Health & Saf. Code, § 11364; Count VII), and misdemeanor making false statements to an officer (§ 148.9, subd. (a); Count VIII). The trial court found defendant had suffered four prior convictions.

The trial court imposed a seven-year aggregate term: the three-year upper term for possessing ammunition as a felon (§ 30305) along with four one-year terms for the prior prison terms (§ 667.5, subd. (b)). For the remaining counts, 30-day terms were imposed and run concurrently.

## DISCUSSION

On appeal, defendant contends insufficient evidence supports the finding that he knew or had the right to control contraband found in the van.

The People respond that substantial evidence exists in that the bullet in the door pocket was in plain view and close to defendant. Similarly, the jury could reasonably infer defendant knowingly possessed the ammunition in the bag because it was within arm's reach and was the same caliber as the bullet in the door pocket. And once the jury

connected the bag of ammunition to him, it could connect the pipe to him as well. Similarly, the glove box was directly in front of him and the stolen identities, like the ammunition, were in a Ziploc bag. The People also argue that the jury could infer consciousness of guilt from defendant providing a false name. We agree with defendant.

Where the sufficiency of the evidence is challenged on appeal, we review the record in the light most favorable to the judgment, to determine whether it discloses substantial evidence. (*People v. Snow* (2003) 30 Cal.4th 43, 66.) Substantial evidence is evidence that is "reasonable, credible and of solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt." (*Ibid*.)

"In determining whether a judgment is supported by substantial evidence, we may not confine our consideration to isolated bits of evidence, but must view the whole record in a light most favorable to the judgment, resolving all evidentiary conflicts and drawing all reasonable inferences in favor of the decision of the trial court. We may not substitute our view of the correct findings for those of the trial court; rather, we must accept any reasonable interpretation of the evidence which supports the trial court's decision. However, we may not defer to that decision entirely. '[I]f the word "substantial" means anything at all, it clearly implies that such evidence must be of ponderable legal significance. Obviously the word cannot be deemed synonymous with "any" evidence. It must be reasonable in nature, credible, and of solid value; it must actually be "substantial" proof of the essentials which the law requires in a particular case.' " (*Beck Development Co. v. Southern Pacific Transportation Co.* (1996) 44 Cal.App.4th 1160, 1203-1204, citations omitted.)

"[E]vidence which merely raises a strong suspicion of the defendant's guilt is not sufficient to support a conviction. Suspicion is not evidence; it merely raises a possibility, and this is not a sufficient basis for an inference of fact." (*People v. Redmond* (1969) 71 Cal.2d 745, 755.) Further, "[w]hile substantial evidence may consist of inferences, such inferences must be 'a product of logic and reason' and 'must rest on the

evidence' . . . inferences that are the result of mere speculation or conjecture cannot support a finding . . . ." (*Kuhn v. Department of General Services* (1994) 22 Cal.App.4th 1627, 1633 (*Kuhn*).)

"Constructive possession occurs when the accused maintains control or a right to control the contraband; possession may be imputed when the contraband is found in a place which is immediately and exclusively accessible to the accused and subject to his dominion and control, or to the joint dominion and control of the accused and another." (*People v. Williams* (1971) 5 Cal.3d 211, 215 (*Williams*).)

In this matter, the prosecution was required to prove that the defendant possessed or had the custody or control of the contraband at issue and that defendant knew that he possessed or had custody or control of the contraband. (See e.g. CALCRIM No. 2591; See *People v. Rubalcava* (2000) 23 Cal.4th 322, 331-332.)

Here, insufficient evidence supports the convictions arising from the contraband. The glove box containing the bag of stolen identity was closed. And nothing indicates the pipe or the bag of bullets in the center console were in plain view. The pipe was in a zipped black pouch, and the bullets were under the pouch — the officer agreed that to see the bag of bullets, he "had to actually pick-up something and remove it out of the center console." Further, the contraband was found in a van cluttered to the point that cockroaches were present.

Little if anything in the record indicates defendant knew contraband was among the clutter. Defendant made no furtive movements and said nothing regarding the contraband. And he did not appear nervous, nor could the officer smell alcohol or burnt methamphetamine. (See *People. v. Boddie* (1969) 274 Cal.App.2d 408, 411-412 [evidence that the passenger was under the influence of narcotics, along with the driver, was alone insufficient to establish the defendant knew of the narcotics].)

The driver, by contrast, told the officer the van was his and that a pipe was in the van. He also claimed the ammunition belonged to his girlfriend. (See *Boddie*, *supra*,

274 Cal.App.2d at p. 411 ["To show knowledge the conduct of the parties, admissions or contradictory statements and explanations are frequently sufficient"].)

The People point to defendant giving a false name as evidence he knew of the contraband. But this is speculative at best. Given defendant had two arrest warrants, the lie was almost certainly an attempt to prevent the discovery of the warrants. (See *Kuhn, supra*, 22 Cal.App.4th at p. 1633 ["inferences that are the result of mere speculation or conjecture cannot support a finding"].)

Similarly, nothing connects the lone bullet in the door pocket to defendant beyond the fact that it was partially in view and next to defendant. Like the rest of the van, the door pocket was cluttered. The bullet was nestled among a spark plug and various other small, unidentified objects. That an experienced police officer noticed the bullet during a traffic stop does not give rise to an inference, beyond speculation or conjecture, that a passenger would take note of it among the clutter.

The authorities the People offer in support, *People v. Nieto* (1966) 247 Cal.App.2d 364 (*Nieto*) and *Williams, supra,* 5 Cal.3d 211, are inapposite. In *Nieto,* the defendant was the driver of a car where a gun was found. (*Nieto,* at pp. 366-367.) Though the passenger testified the gun was his, the court concluded the fact that the gun was found under the front seat when Nieto was driving was circumstantial evidence of joint or constructive possession. (*Id.* at pp. 367-368.) In *Williams,* the defendant was alone in the passenger seat of a parked car. (*Williams,* at p. 213.) An officer saw him make a motion to the center of the seat and subsequently a Benzedrine tablet was found on the carpet in front of him, next to two paper bags holding beer. (*Id*. at pp. 213-214.) While sufficient circumstantial evidence supported a finding that Williams had dominion and control over the tablet in front of him, the court found no evidence Williams knew the tablets were restricted dangerous drugs. (*Id*. at p. 215.) Here, defendant was neither the driver, nor sitting alone in a parked car with contraband at his feet.

Finally, the People look for support to *People v. Miranda* (2011) 192 Cal.App.4th 398 (*Miranda*) but this case does not carry the day for them either. In *Miranda* the item at issue was a shotgun that was thrown from a car occupied by a number of passengers. Noting that the item at issue was a shotgun and not a handgun, the court held that the jury there could have reasonably inferred that those in the car were aware of the presence of the shotgun in the car. In this matter the contraband at issue was not a shotgun or even a handgun but was a single bullet tucked in among other items in the door pocket of a car. *Miranda* does not apply here.

In short, we cannot conclude defendant's convictions arising out of the contraband rest on evidence that is "reasonable, credible and of solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt." We will therefore reverse the conviction on Counts I though V and Count VII.

## DISPOSITION

The judgment of conviction is reversed on Counts I, II, III, IV, V, and VII. The matter is remanded to the trial court for resentencing.

HULL, J.

We concur:

BLEASE, Acting P. J.

DUARTE, J.